

Proposed Rules of Origin for Chemical Chapters under the North American Free Trade Agreement

The American Chemistry Council (ACC), Chemistry Industry Association of Canada (CIAC), and National Chemical Industry Association (ANIQ) of Mexico propose these rules of origin for chemical chapters in a modernized NAFTA.

Rules of origin under NAFTA should be clear, simple, and transparent. The goal should be to reduce transactional time and costs to the maximum extent possible to the benefit of commerce (industry) of the Parties. It should be the right of the importer and exporter of record to select from the non-hierarchical order outlined in this paper in providing proof of origin for trade transactions amongst the Parties. Should a change to the rules of origin disadvantage a particular product, the Parties should allow for a transitional period or other mitigation provisions.

RULES OF ORIGIN

Rules of origin for Harmonized System (HS) chemical chapters 28, 29, 31, 32, 34, 35, 38, 39 and 40 under NAFTA should be based on “last substantial transformation,” which is understood to confer origin if one of the following rules apply (non-hierarchical order):

Option 1: Change in Tariff Classification. One of the methods for determining origin should continue to be the rule of change in tariff classification (tariff shift) on a subheading (six-digit HS code).

Option 2: *De Minimis*. A good that does not undergo a change in tariff classification nonetheless should be considered an originating good if the value of all non-originating materials that have been used in the production of the good, and which do not undergo the applicable change in tariff classification, does not exceed 15 percent of the adjusted value of the good.

Option 3: Chemical Reaction. A “chemical reaction” is a process (including a biochemical reaction) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule. Such a chemical reaction should be considered as conferring origin.

The following processes should *not* be considered as conferring origin:

- (a) dissolving in water or other solvents;
- (b) the elimination of solvents including solvent water; or
- (c) the addition or elimination of water of crystallization.

Option 4: Added-Value. Added-value (regional value content) should be considered as conferring origin, and its criteria should be calculated with one of the following options:

- (a) Value of all the non-originating materials used does not exceed 60 percent of the ex-works price of the product¹;
- (b) Net cost², where the value of all non-originating materials used does not exceed 70 percent; or

¹ Ex-works (EXW) as defined by Incoterms® 2010.

² The net cost is the cost to produce a good. It excludes sales promotion costs, marketing and after-sales service costs, royalties, shipping and packing costs, and non-allowable interest costs.

- (c) Transaction value³, where the value of all the non-originating materials used does not exceed 60 percent.

Option 5: Mixtures and Blends. This rule pertains to the deliberate and proportionally controlled mixing or blending (including dispersing) of materials, other than the addition of diluents, to conform to predetermined specifications. When mixing and blending results in the production of a good having physical or chemical characteristics that are relevant to the purposes or uses of the good and are different from the input materials, then the process should be considered as conferring origin.

Option 6: Purification. Purification should be considered as conferring origin provided that purification occurs in the territory of one or both of the Parties and results in one of the following criteria being satisfied:

- (a) purification of a good resulting in the elimination of 80 percent of the content of existing impurities; or
- (b) the reduction or elimination of impurities resulting in a good suitable for one or more of the following applications:
 - (i) pharmaceutical, medical, cosmetic, veterinary or food grade substances;
 - (ii) chemical products and reagents for analytical, diagnostic or laboratory uses;
 - (iii) elements and components for use in micro-electronics;
 - (iv) specialized optical uses;
 - (v) biotechnical use (e.g., in cell culturing, in genetic technology, or as a catalyst);
 - (vi) carriers used in a separation process; or
 - (vii) nuclear grade uses.

Option 7: Change in Particle Size. This rule pertains to the deliberate and controlled modification in particle size of a good, other than by merely crushing or pressing, resulting in a good having a defined particle size, defined particle size distribution, or defined surface area. When a change in particle size of a good is relevant to the purposes of the resulting good and has different physical or chemical characteristics from the input materials, the process should be considered as conferring origin.

Option 8: Standard Materials. Standard materials (including standard solutions) are preparations suitable for analytical, calibrating, or referencing uses having precise degrees of purity or proportions which are certified by the manufacturer. The production of standard materials should be considered as conferring origin.

Option 9: Isomer Separation. The isolation or separation of isomers from a mixture of isomers should be considered as conferring origin.

Option 10: Biotechnological Process. A biotechnological process—as defined as a biochemical reaction in Option 3, or in (a), (b), and (c) below—should be considered as conferring origin:

- (a) Biological or biotechnological culturing, hybridization or genetic modification of:
 - a. micro-organisms (bacteria, viruses [including phages], etc.); or
 - b. human, animal or plant cells;

³ The transaction value (cost, insurance, and freight [CIF] or free on board [FOB]) is the value of the imported goods, or of identical or similar imported goods, for the purpose of origin calculation.

- (b) Production, isolation, or purification of cellular or intercellular structures (such as isolated genes, gene fragments and plasmids); or
- (c) Products are obtained by fermentation.

RELATED ELEMENTS

Minimal Operations or Processes Not Sufficient to Confer Origin: Minimal operations and/or processes which should not be considered sufficient to confer origin are the following:

- (a) unloading, reloading or any other operation necessary to maintain the good in good condition during transport and storage;
- (b) application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings and polishing operations;
- (c) washing, and/or cleaning, including removal of rust, dust, grease, paint, or other coatings;
- (d) mere dilution with water or another substance that does not materially alter the characteristics of the goods; simple mixing of products, whether or not of different kinds;
- (e) trimming, filing, sharpening, simple grinding, simple cutting;
- (f) testing, sorting or grading; sifting, screening, classifying, matching (including the making-up of sets of articles); marking, affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;
- (g) simple placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations; breaking-up and assembly of packages; or
- (h) simple assembly of parts of articles to constitute a complete article or disassembly of products into parts.

Duty Drawback: Duty drawback and duty deferral rights should be permitted in NAFTA.

Country of Origin Marking: Whether marking is optional or imposed by the regulation of the importing country, these above rules of origin should have the preference to any other rule relating to the establishment of the country of origin.

Records Retention: Canada, Mexico and the U.S. should agree to fix the time period for records retention in the agreement to five years from the date of entry in the customs territory (import declaration date).

Origin Verification: Canada, Mexico, and the U.S. should agree to establish direct origin verifications, where the importing party is notified of the initiative of a verification procedure.

Certificate of Origin: To make the customs process more flexible, Canada, Mexico, and the U.S. should allow importers/exporters/producers to issue certificates of origin using invoices issued containing the minimum necessary information. In the event that the certificates of origin are issued by the importer, the importer should use a previously agreed format with minimum information and free reproduction.

NAFTA Joint Customs Cooperation Working Group: ACC, ANIQ, and CIAC call for the establishment of a working group on rules of origin to ensure American, Canadian, and Mexican customs offices are implementing and reinforcing common practices on rules of origin and to continuously improve NAFTA leadership in customs cooperation.